

Environmental Protection Agency

§ 85.1606

seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at that single location approximately three (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

Primarily used means used 51 percent or more.

[59 FR 36987, July 20, 1994, as amended at 63 FR 18998, Apr. 16, 1998]

§ 85.1603 Application of definitions; scope of preemption.

(a) For equipment that is used in applications in addition to farming or construction activities, if the equipment is primarily used as farm and/or construction equipment or vehicles, as defined in this subpart, it is considered farm or construction equipment or vehicles.

(b) States and any political subdivisions thereof are preempted from adopting or enforcing standards or other requirements from new engines smaller than 175 horsepower, that are primarily used in farm or construction equipment or vehicles, as defined in this subpart.

(c)(1) States and any political subdivisions thereof are preempted from adopting or enforcing standards or other requirements relating to the control of emissions from new locomotives and new engines used in locomotives.

(2) During a period equivalent in length to 133 percent of the useful life, expressed as MW-hrs (or miles where applicable), beginning at the point at which the locomotive or engine becomes new, those standards or other requirements which are preempted include, but are not limited to, the following: emission standards, mandatory fleet average standards, certification requirements, aftermarket equipment requirements, and nonfederal in-use testing requirements. The standards and other requirements specified in the preceding sentence are preempted whether applicable to new or other locomotives or locomotive engines.

(d) No state or any political subdivisions thereof shall enforce any standards or other requirements relating to the control of emissions from nonroad engines or vehicles except as provided for in this subpart.

[59 FR 36987, July 20, 1994, as amended at 62 FR 67736, Dec. 30, 1997; 63 FR 18998, Apr. 16, 1998]

§ 85.1604 Procedures for California nonroad authorization requests.

(a) California shall request authorization to enforce its adopted standards and other requirements relating to the control of emissions from nonroad vehicles or engines that are otherwise not preempted by § 85.1603(b) or § 85.1603(c) from the Administrator of EPA and provide the record on which the state rulemaking was based.

(b) After receipt of the authorization request, the Administrator shall provide notice and opportunity for a public hearing regarding such requests.

[59 FR 36987, July 20, 1994, as amended at 62 FR 67736, Dec. 30, 1997]

§ 85.1605 Criteria for granting authorization.

(a) The Administrator shall grant the authorization if California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards.

(b) The authorization shall not be granted if the Administrator finds that:

(1) The determination of California is arbitrary and capricious;

(2) California does not need such California standards to meet compelling and extraordinary conditions; or

(3) California standards and accompanying enforcement procedures are not consistent with section 209.

§ 85.1606 Adoption of California standards by other states.

Any state other than California which has plan provisions approved under Part D of Title I of the Clean Air Act may adopt and enforce emission standards for any period, for nonroad vehicles and engines subject to the following requirements:

(a) The state must provide notice to the Administrator that it has adopted such standards.

(b) Such standards shall not apply to new engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower or to new locomotives or new engines used in locomotives.

(c) Such standards and implementation and enforcement shall be identical, for the period concerned, to the California standards authorized by the Administrator.

(d) The state shall adopt such standards at least two years before commencement of the period for which the standards take effect.

(e) California shall have adopted such standards two years before commencement of the period for which the standards take effect in the state that is adopting under section 209(e)(2)(B).

[59 FR 36987, July 20, 1994, as amended at 62 FR 67736, Dec. 30, 1997]

Subpart R—Exclusion and Exemption of Motor Vehicles and Motor Vehicle Engines

AUTHORITY: Secs. 208(b)(1), 216(2), and 301, Clean Air Act (42 U.S.C. 7522, 7550, and 7061).

SOURCE: 39 FR 32611, Sept. 10, 1974, unless otherwise noted.

§ 85.1701 General applicability.

(a) The provisions of this subpart regarding exemption are applicable to new and in-use motor vehicles and motor vehicle engines.

(b) The provisions of this subpart regarding exclusion are applicable after the effective date of these regulations.

(c) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles and light-duty trucks under the provisions of 40 CFR part 86, subpart S.

[39 FR 32611, Sept. 10, 1974, as amended at 64 FR 23919, May 4, 1999]

§ 85.1702 Definitions.

(a) As used in this subpart, all terms not defined herein shall have the meaning given them in the Act:

(1) *Export exemption* means an exemption granted by statute under section 203(b)(3) of the Act for the purpose of exporting new motor vehicles or new motor vehicle engines.

(2) *National security exemption* means an exemption which may be granted under section 203(b)(1) of the Act for the purpose of national security.

(3) *Pre-certification vehicle* means an uncertified vehicle which a manufacturer employs in fleets from year to year in the ordinary course of business for product development, production method assessment, and market promotion purposes, but in a manner not involving lease or sale.

(4) *Pre-certification vehicle engine* means an uncertified heavy-duty engine owned by a manufacturer and used in a manner not involving lease or sale in a vehicle employed from year to year in the ordinary course of business for product development, production method assessment and market promotion purposes.

(5) *Testing exemption* means an exemption which may be granted under section 203(b)(1) for the purpose of research investigations, studies, demonstrations or training, but not including national security.

[39 FR 32611, Sept. 10, 1974, as amended at 45 FR 13733, Mar. 3, 1980; 47 FR 30484, July 14, 1982]

§ 85.1703 Application of section 216(2).

(a) For the purpose of determining the applicability of section 216(2), a vehicle which is self-propelled and capable of transporting a person or persons or any material or any permanently or temporarily affixed apparatus shall be deemed a motor vehicle, unless any one or more of the criteria set forth below are met, in which case the vehicle shall be deemed not a motor vehicle and excluded from the operation of the Act:

(1) The vehicle cannot exceed a maximum speed of 25 miles per hour over level, paved surfaces; or